

REMARKS

Favorable reconsideration of the instant application in view of the present amendment and the following comments is respectfully requested. By the above amendment, withdrawn claims 1-11 and 15-18 have been canceled, claims 19 and 23 have been amended, and new claims 24-25 have been added. Applicants submit that support for these amendments can be found in the specification as filed. For example, support for the phrase "at least 550 amino acid residues", as recited by new claims 24-25, can be found at page 60, lines 6-15. The above amendments are not to be construed as acquiescence with regard to the Examiner's rejections, and are made without prejudice to prosecution of any subject matter modified and/or removed by this amendment in a related divisional, continuation and/or continuation-in-part application. Applicants acknowledge and thank the Examiner for the withdrawal of prior rejections under 35 U.S.C. § 112, first paragraph, in view of Applicants' response.

Rejections under 35 U.S.C. § 102

Claims 19 and 21-23 stand rejected under 35 U.S.C. § 102(a) as being anticipated by WO 99/17741. According to the Examiner, WO 99/17741 discloses a sequence having 97.2% identity with SEQ ID NO: 190. The Examiner further asserts that Applicants' previous amendment to the claims requiring that a sequence of the claimed invention be at least 98% identical to the polypeptide of SEQ ID NO: 190 fails to overcome the rejection because the immunogenic portions of the claims allegedly encompass a polypeptide sequence that is identical to a sequence disclosed by WO 99/17741.

Applicants respectfully traverse this rejection. By the above amendment, and without prejudice or acquiescence to the stated grounds for rejection, Applicants have amended claims 19 and 23 to require that the claimed methods are drawn to the stimulation of human T-cells. Applicants further submit that WO 99/17741 fails to anticipate the currently claimed invention. As established by the Federal Circuit, to be prior art under section 102, "a reference must put the anticipating subject matter at issue into the possession of the public through an enabling disclosure." *Chester v. Miller*, 906 F.2d 1574, 15 USPQ2d 1333 (Fed. Cir. 1990). WO 99/17741 is deficient in this respect and would be recognized as such by an artisan of ordinary skill. The Examiner relies upon a generic description in WO 99/17741, at page 15, lines 3-15, that a polypeptides described by WO 99/17741 can be used for inducing a protective

immune response in an animal. However, Applicants respectfully submit that the disclosure by this cited reference represents merely an invitation to experiment regarding the elicitation of a human T-cell immune response, but clearly does not provide an enabling disclosure for actually stimulating human T-cells in either a subject or a biological sample, as currently claimed. Moreover, newly added claims 24-25 require that a polypeptide of the claimed invention minimally comprises at least 550 contiguous amino acid residues of SEQ ID NO: 190. As WO99/17741 fails to disclose any polypeptide comprising at least 550 contiguous amino acid residues of SEQ ID NO: 190, Applicants submit that claims 24-25 are also novel over this cited reference. Reconsideration of the Examiner's rejection under 35 U.S.C. § 102 is thus respectfully requested.


The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

All of the claims remaining in the application are now believed to be in condition for allowance. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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